IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.237-SB of 1996
Date of decision : 2.8.2007

Sadhu Ram

...Appellant

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER

.....

Present : Mr. Baldev Singh, Sr.Advocate with
Mr. Arshwinder Singh, Advocate
for the appellant.

Ms.Shalini Attri, Asstt. Advocate General,
Haryana for the State.

...

MAHESH GROVER, J.

The appellant was charged for having committed an offence under Sections 304-B and 498-A of the Indian Penal Code and vide judgment/order dated 27/29.2.1996 was convicted and sentenced to undergo rigorous imprisonment for a period of ten years under Section 304-B of the Indian Penal Code. No separate sentence was awarded to him under Section 498-A of the Indian Penal Code.

The appellant has assailed the aforesaid judgment dated 27.2.1996 of the Addl. Sessions Judge, Hissar convicting and sentencing him as above.

One Smt. Bhateri, the deceased, daughter of Tula Ram was married to appellant Sadhu Ram on 22.3.1993. She died on account of consumption of poisonous material, which was subsequently found to be 'mono crotophos pesticide', within eight months of her marriage.

i.e. on the night intervening 23/24.11.1993. The FIR was registered on 24.11.1993 at 11.00 p.m. against the appellant, his father Kanshi Ram, his mother Phuli Devi and brother Parbhu.

After completion of investigation the police presented a challan against all the four persons and they were accordingly chargesheeted for having committed an offence under Sections 304-B and 498-A of the Indian Penal Code. All the accused persons pleaded not guilty and claimed trial.

The prosecution examined as many as 11 witnesses, which included the testimony of PW7 Dharamvir and PW10 Ishwar Singh, brothers of deceased Bhateri.

In their statements recorded under Section 313 of the Code of Criminal Procedure it was pleaded by the appellant and other accused persons that they had been falsely implicated at the behest of one Mewa Singh who was married to the sister of the deceased. Smt. Bhateri also used to remain unhappy and used to insist that the appellant take up a separate residence from his parents. It was also pleaded that all this was done at the instigation of Mewa Singh and that he used to exercise a lot of influence on the deceased. Five days before the fateful day the appellant is said to have brought the deceased from Parta and she insisted that she should be taken to the house of Mewa Singh before going to her matrimonial home. The appellant refused, upon which she got enraged. When they reached their home Mewa Singh is said to have come to their house on the same day but he was not allowed to enter. Upon this, the deceased is said to have lost her balance and put an end to her life by consuming

pesticide. The demands of dowry and treating the deceased with cruelty were denied.

The appellant produced DW1 Manphool and DW2 Bhag Chand as his defence witnesses.

The trial Court after appraisal of the evidence before it came to the conclusion that the appellant was guilty of having committed an offence under Sections 304-B and 498-A of the Indian Penal Code and sentenced him as aforesaid. The other three persons were, however, acquitted.

The appellant while assailing the impugned judgment referred to the material contradictions in the statements of PW7 Dharamvir and PW10 Ishwar Singh and also referred to the findings recorded by the court below where it was specifically noted that the witnesses had improved upon their versions and were not trustworthy and on the basis of which it had proceeded to accord acquittal to the similarly charged persons as the appellant. On the strength of this learned counsel for the appellant pleaded that the same set of evidence could not be used differently to convict a person and to acquit others. He further contended that it was a case of suicide which was clear from the fact that no injuries were found on the body of the deceased and the appellant had no role to play in the death of the deceased.

On the other hand, learned counsel appearing for the State strenuously urged that the death in this case had taken place within a very short period of the marriage and, therefore, the conviction accorded by the trial court was perfectly justified.

I have heard the learned counsel for the parties and have also perused the record.

Concededly the death of Smt. Bhateri had taken place in her matrimonial home within a short interregnum of eight months of her marriage to the appellant. The death also was admittedly on account of consumption of 'mono crotophos pesticide' which was established by the Forensic Science Laboratory's report and supported by the testimony of PW1 Dr.Suman. This witness has also gone on to testify as follows :

> "....The glass bangles which the deceased was wearing were intact and there was no damage to the area of the arm under the bangles. The possibility of the deceased having herself consumed poison cannot be ruled out. The poison found in the viscera is a strong irritant and vomitings are likely to follow consumption thereof."

PW7 Dharamvir, the brother of the deceased has also said that the deceased had put an end to her life by consuming some poisonous substance due to the harassment and cruelty of the accused persons in relation to the demands for more dowry. Even though the statements of the aforesaid witnesses have been commented upon adversely by the trial Court, yet one cannot lose sight of the fact that the death of a young girl had taken place in her matrimonial home within eight months of the marriage and there are overt acts of demands of dowry. The statements of these witnesses have not found favour because of certain inconsistencies the benefit of which has been given to the other accused persons.

Unnatural death within a short span of marriage invites a strong presumption of law under Section 304-B of the Indian Penal Code coupled with the provisions of Section 498-A of the Indian Penal Code.

Section 304-B IPC is reproduced below for reference :-

"**304-B. Dowry death**. --(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

The trial Court was right in acquitting the other accused persons in the absence of any cogent evidence against them to establish their complicity regarding demands of dowry and treating the deceased with cruelty given the propensity of a complainant to involve other members of the family. But in the opinion of this Court

the husband cannot escape the liability of creating such a situation by raising demands to a pitch which ultimately resulted in the death of his wife. Implicit in the sequence of events is the fact that the deceased was subjected to harassment on account of dowry which led to her death. A reference to demands of dowry by the witnesses only establish that he is the benefactor and thus becomes the prime perpetrator of the offence.

Though unflinching evidence of demands of dowry is not there but the shades of the demands made find their echo in the statements of the witnesses. That apart, the appellant cannot cross the insurmountable hurdle of presumption of law under Section 113-B of the Indian Evidence Act when the death of his wife has concededly taken place within eight months of the marriage in an unnatural manner.

The appeal is devoid of any merit and is dismissed as such.

2.8.2007 (MAHESH GROVER)
JUDGE

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